

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,

1:10-cv-01770-DLB (HC)

Petitioner,

vs.

ORDER TRANSFERRING CASE TO THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
CALIFORNIA

DERRAL ADAMS,

Respondent.

_____/

Petitioner, a state prisoner proceeding pro se, has filed a habeas corpus action pursuant to 28 U.S.C. § 2254, in which he challenges a prison disciplinary action.

Petitioner has submitted an application to proceed in forma pauperis; the application has not been ruled on by this court.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” 28 U.S.C. § 1391(b).

In a habeas matter, venue is proper in either the district of conviction or the district of confinement. 28 U.S.C. § 2241(d). In this case, petitioner challenges the result of a prison

1 disciplinary proceeding which occurred at Pelican Bay State Prison located in the Northern District of
2 California. Whereas here the petitioner attacks the execution of his sentence, as opposed to an attack
3 on the conviction itself, the proper forum in which to review such a claim is the district of
4 confinement. See Dunn v. Henman, 875 F.2d 244, 249 (9th Cir. 1989) (stating, in a 28 U.S.C. §
5 2241 action, that "[t]he proper forum to challenge the execution of a sentence is the district where the
6 prisoner is confined."). Petitioner is confined in Pelican Bay State Prison located in the Northern
7 District of California. Therefore, the petition should have been filed in the United States District
8 Court for the Northern District of California. In the interest of justice, a federal court may transfer a
9 case filed in the wrong district to the correct district. See 28 U.S.C. § 1406(a); Starnes v. McGuire,
10 512 F.2d 918, 932 (D.C. Cir. 1974).

11 Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the United States
12 District Court for the Northern District of California.

13
14 IT IS SO ORDERED.

15 Dated: September 29, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE